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Attorneys for Plaintiff GENERAL STAR
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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

GENERAL STAR INDEMNITY
COMPANY,

Plaintiff,

vs.

F&M RADIOLOGY MEDICAL
CENTER, INC. d/b/a SINA URGENT
CARE; MOOSA HEIKALI, M.D.;
BAHRAM TABIBIAN, M.D.; VENUS
NAVARRO JULIAN, M.D.; and
FATEMEH SHAHRIARI,

Defendants.

Case No. 2:22-cv-02233

COMPLAINT FOR DECLARATORY
JUDGMENT & REIMBURSEMENT

Demand for Jury Trial

1 NOW COMES Plaintiff, GENERAL STAR INDEMNITY COMPANY
2 (hereinafter “General Star”), by and through its attorneys, and for its Complaint for
3 Declaratory Judgment against F&M RADIOLOGY MEDICAL CENTER, INC. d/b/a
4 SINA URGENT CARE, MOOSA HEIKALI, M.D., BAHRAM TABIBIAN, M.D.,
5 VENUS NAVARRO JULIAN, M.D. and FATEMEH SHAHRIARI states as follows:

6 **PARTIES**

7 1. General Star is a Delaware corporation with its principal place of
8 business located in the state of Connecticut.

9 2. At all times relevant, General Star was authorized to do business in and
10 issue insurance policies in the State of California.

11 3. At all times relevant, F&M RADIOLOGY MEDICAL CENTER, INC.
12 (“F&M Radiology”) was a California corporation having its principal place of
13 business in California.

14 4. At all times relevant, F&M Radiology owned and operated SINA
15 URGENT CARE (“Sina Urgent Care”) under a fictitious name permit issued by the
16 State of California.

17 5. At all times relevant, MOOSA HEIKALI, M.D. (“Heikali”) was an
18 individual and citizen of California. Heikali resides in California and, upon
19 information and belief, intends to remain a resident of California.

20 6. Heikali’s medical license was revoked effective January 2, 2015.

21 7. At all times relevant, BAHRAM TABIBIAN, M.D. (“Tabibian”) was an
22 individual and citizen of California. Tabibian resides in California and, upon
23 information and belief, intends to remain a resident of California.

24 8. Tabibian’s medical license was suspended effective October 4, 2019.

25 9. At all times relevant, VENUS NAVARRO JULIAN, M.D. (“Julian”) was an individual and citizen of California. Julian resides in California and, upon
26 information and belief, intends to remain a resident of California.
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1 10. At all times relevant, FATEMEH SHAHRIARI (hereinafter “Shahriari”)
2 is an individual and citizen of California. Shahriari resides in California and, upon
3 information and belief, intends to remain a resident of California.

4 **JURISDICTION AND VENUE**

5 11. This Court has original jurisdiction over this action under the provisions
6 of 28 U.S.C. § 1332 because this action is between citizens of different states and the
7 amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs.

8 12. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) as
9 F&M Radiology, Heikali, Tabibian and Julian reside in this District.

10 13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2)
11 because a substantial part of the events or omissions giving rise to this claim occurred
12 in this District.

13 **NATURE OF ACTION**

14 14. This action arises out of a controversy between the parties regarding a
15 Miscellaneous Health Care Facilities Insurance Policy (the “Policy”) issued by
16 General Star to F&M Radiology.

17 15. General Star brings the instant action for declaratory judgment pursuant
18 to Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. § 2201 to declare
19 the rights and obligations between the parties under the Policy as it relates to a demand
20 for insurance coverage by F&M Radiology, Heikali, Tabibian and Julian in response
21 to a lawsuit filed by Shahriari on April 23, 2021 in the Superior Court for the County
22 of Los Angeles, California entitled *Fatemeh Shahriari v. Moosa Heikali, M.D., et al.*,
23 Case No. 21STCV15479 (the “Underlying Lawsuit”).

24 16. Shahriari has been joined as a Defendant herein pursuant to Rule 19 of
25 the Federal Rules of Civil Procedure as the determination of General Star’s rights and
26 obligations under the Policy may affect her interests.

1 17. There exists an actual controversy between the parties that requires a
 2 declaration by this Court of the rights and obligations under the Policy as it relates to
 3 the Underlying Lawsuit.

4 18. The amount in controversy exceeds \$75,000 because the Underlying
 5 Lawsuit seeks damages in excess of the Policy's \$1 million Limit of Liability.

6 19. Specifically, General Star seeks a judicial determination that there is no
 7 coverage for the Underlying Lawsuit for Julian as she is not an **Insured** under the
 8 Policy. General Star also seeks a judicial determination that there is no coverage for
 9 the Underlying Lawsuit pursuant to the express terms of the Policy by operation of
 10 Exclusion 19 of the Policy, which precludes coverage for a **claim** arising out of a
 11 **medical incident** involving any **Insured** that occurs during any time such **Insured's**
 12 professional license has been suspended, revoked or voluntarily surrendered.¹
 13 Further, General Star seeks a judicial determination coverage is precluded by
 14 operation of Exclusion 7, which precludes coverage for any **claim** arising out of,
 15 resulting from, caused by or contributed to by any criminal, malicious, dishonest or
 16 fraudulent act, error or omission committed by or at the direction of any **Insured**.
 17 Additionally, pursuant to the express terms of the Policy, General Star seeks the
 18 reimbursement of all **damages** or **claim expenses** paid by it in connection with the
 19 Underlying Lawsuit.

20 FACTUAL BACKGROUND

21 The Underlying Lawsuit

22 20. On January 25, 2021, F&M Radiology, Heikali, Tabibian, and Julian
 23 received correspondence from counsel for Shahriari pursuant to § 364 of the
 24 California Code of Civil Procedure (the "Notice of Intent").

25 21. The Notice of Intent advised F&M Radiology, Heikali, Tabibian, and
 26 Julian of Shahriari's intent to commence a lawsuit against them as a result of a right
 27

28 ¹ Bolded terms are defined in the Policy.

1 knee injection administered to Shahriari on January 23, 2020 at Sina Urgent Care.

2 22. General Star was provided with a copy of the Notice of Intent and
3 subsequently notified F&M Radiology, Heikali, Tabibian, and Julian of its coverage
4 position in connection with the Notice of Intent.

5 23. On April 23, 2021, Shahriari filed the Underlying Lawsuit in the
6 Superior Court for the County of Los Angeles, California entitled *Fatemeh Shahriari*
7 *v. Moosa Heikali, M.D., et al.*, Case No. 21STCV15479. A true and correct copy of
8 the Complaint filed in the Underlying Lawsuit is attached hereto as **Exhibit A**.

9 24. The Underlying Lawsuit alleges that on January 23, 2020, Shahriari
10 received medical treatment at Sina Urgent Care from Heikali in the form of an
11 injection in her right knee. It is alleged the treatment provided by Heikali on that date
12 and thereafter was inadequate and, as a result, Shahriari contracted an infection and
13 sustained permanent damage to her right knee. The Underlying Lawsuit seeks the
14 recovery of general, special and punitive damages, prejudgment interest, and
15 attorney's fees and costs as a result of the injuries sustained by Shahriari.

16 25. The Underlying Lawsuit further alleges that Heikali's medical license
17 was suspended in 2015 even though Heikali and the staff at Sina Urgent Care
18 allegedly held Heikali out as a licensed physician. In particular, it is alleged that
19 Tabibian, who was the CEO and director of F&M Radiology in January 2020,
20 employed Heikali and allowed him to see patients with full knowledge that Heikali
21 did not have a valid medical license. It is further alleged that F&M Radiology allowed
22 Heikali to treat patients despite an announcement on November 14, 2019, that the Los
23 Angeles City Attorney would be prosecuting Heikali for practicing medicine without
24 a license and prosecuting Tabibian for aiding and abetting the unauthorized practice
25 of medicine by Heikali. The Underlying Lawsuit accordingly alleges that Tabibian
26 and F&M Radiology are responsible for the damage caused by Heikali and the fraud
27 perpetrated on Shahriari.

28 26. General Star was notified of the Underlying Lawsuit on June 15, 2021.

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2 27. General Star agreed to provide a defense to F&M Radiology, Heikali,
3 and Tabibian in connection with the Underlying Lawsuit and continues to provide a
4 defense to F&M Radiology, Heikali, and Tabibian, subject to a strict reservation of
5 rights.

6 **The General Star Policy**

7 28. General Star issued Miscellaneous Health Care Facilities Insurance
8 Policy No. IJG930516A to F&M Radiology Medical Center, Inc. for the Policy Period
9 of November 11, 2020 to December 11, 2021 (the “Policy”). A true and correct copy
10 of the Policy is attached hereto as **Exhibit B**.

11 29. Section I (Insuring Agreement) of the Policy provides as follows:

12 We will pay all amounts up to our Limit of Insurance that an
13 **Insured** becomes legally obligated to pay as **damages** because
14 of:

- 15 a. **Claims** first made against an **Insured** during the **policy**
16 **period** arising from a **medical incident** that takes place on
17 or after the Retroactive Date shown in the Declarations or
18 an Endorsement or Schedule attached to this policy and
19 prior to the end of the **policy period** and reported to us in
20 writing during the **policy period** or within thirty (30) days
21 thereafter or during any Optional Extended Reporting
22 Period, if applicable; ...

23 No other obligation or liability to pay any sum or perform any act
24 or service is covered unless explicitly provided for in this
25 **INSURING AGREEMENT**. ...

26 30. Section II (Who is an Insured) states as follows:

- 27 1. Any individual or organization stated in the Declarations of
28 this policy is a **Named Insured**.

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- 2. The policy covers the **Named Insured** as follows:
 - a. If the **Named Insured** is designated in the Declarations as an organization other than a partnership, joint venture or limited liability company; any Executive Officer thereof is an **Insured**, but only with respect to their duties as the **Named Insured's** officers or directors and exclusively in the rendering of professional services for the **Named Insured**;
- 3. Subject to the limitations below, the following are **Insureds**:
 - a. Your students, employees and **volunteer workers** when working for you within the scope of their duties. ...
- 5. **Insured** shall not include any person who is a resident, intern, physician, surgeon, dentist, licensed or certified registered nurse anesthetist, nurse midwife, podiatrist or chiropractor, arising out of a **medical incident**, whether or not they are students, employees or **volunteer workers**.

31. The Definitions Section of the Common Policy Provisions of the Policy contains the following relevant definitions:

- 5. **Claim** means:
 - a. A **suit**;
 - b. A written order or demand for **damages**, which is not a **suit**, arising from an **occurrence** or **medical incident**; or
 - c. An arbitration proceeding or other alternative dispute resolution proceeding seeking **damages**, to which an **Insured** is required to submit by statute or court rule or

1 to which an **Insured** submits with our consent, arising
 2 from an **occurrence** or **medical incident**.

3 **Claim** does not include **potential claims**, or a **suit**, written
 4 order or demand, or proceeding seeking solely declarative,
 5 injunctive or other non-pecuniary or equitable relief; or that
 6 portion of a **suit**, written order or demand or proceeding
 7 seeking **damages** that also seeks declarative, injunctive or
 8 other nonpecuniary or equitable relief.

- 9 9. **Damages** means sums, including punitive or exemplary
 10 damages, if insurable under applicable law, that an **Insured**
 11 becomes legally obligated to pay as a result of a **claim**.

12 **Damages** do not include:

- 13 a. Sanctions, fines, taxes or penalties;
 14 b. Payment for professional services, including refund of
 15 fees, withdrawal or reduction of fees paid to an **Insured**;
 16 c. Disgorgement of profits and/or rescissory damages;
 17 d. Attorneys' fees in defense of a person or entity other
 18 than an **Insured**; or
 19 e. Costs of non-pecuniary or equitable relief.
- 20 11. **Insured** means any person or entity qualifying as such under
 21 **SECTION II – WHO IS AN INSURED** of the
 22 **PROFESSIONAL LIABILITY INSURANCE**
 23 **COVERAGE PART** or of the **GENERAL LIABILITY**
 24 **COVERAGE PART**, if applicable.
- 25 13. **Medical Incident** means any act, error or omission, or a
 26 series of related acts, errors or omissions, in the providing of
 27 or failure to provide **professional services** including the
 28 actual, threatened, attempted, proposed or alleged abuse

1 and/or molestation of a patient of an **Insured** if a sublimit for

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3 **Abuse or Molestation** is shown in the Limits of Insurance in
4 the Declarations. This includes an **Insured's** responsibility
5 for anyone acting under the **Insured's** direction or control.

6 20. **Professional Services** means services performed in the
7 treatment or care of any person, including medical, dental,
8 nursing, psychiatric, osteopathic, chiropractic, or other
9 professional healthcare services, including:

10 a. The furnishing of food, beverages, medications, or
11 equipment or appliances in connection with such
12 treatment or care;

13 b. The furnishing of such professional healthcare services
14 as a member of a board or committee for formal
15 accreditation or standards review (including **peer**
16 **review**) or similar professional board or committee,
17 including executing the directives of such board or
18 committee; and

19 c. The postmortem handling of human bodies.

20 **COUNT I**

21 **Declaration that Julian is not an Insured under the Policy**

22 32. General Star repeats and realleges Paragraphs 1 through 30 of this
23 Complaint for Declaratory Judgment as if fully set forth herein.

24 33. Section II (Who Is Insured), Para. 5 of the Policy expressly provides that
25 the term **Insured** shall not include any person who is a resident, intern, physician,
26 surgeon, dentist, licensed or certified registered nurse anesthetist, nurse midwife,
27 podiatrist or chiropractor, arising out of a **medical incident**, whether or not they are
28 students, employees or **volunteer workers**.

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34. During the period referenced in the Underlying Lawsuit, Julian was a physician practicing medicine under a valid medical license issued by the State of California

35. Julian, as a physician, is not an **Insured** under the Policy and is not entitled to coverage under the Policy for the Underlying Lawsuit.

COUNT II

**Declaration that Coverage is Precluded by Operation
of Exclusion 19 of the Policy**

36. General Star repeats and realleges Paragraphs 1 through 34 of this Complaint for Declaratory Judgment as if fully set forth herein.

37. Common Policy Provisions (General Exclusions), Para. 19 of the Policy provides as follows:

We will not defend or pay **damages** or **claim expenses** for any **claim** or **potential claim** arising out of, resulting from, caused by or contributed to by any of the following:

19. **Licensure:** A medical incident involving any **Insured** that:

- a. Occurs during any time such **Insured's** professional license has been suspended, revoked or voluntarily surrendered;
- b. Constitutes a violation of any restriction imposed or placed upon such license; or
- c. Falls outside the scope of such license.

38. Exclusion 19 precludes coverage for any **claim** arising out of a **medical incident** involving any **Insured** that occurs during any time such **Insured's** professional license has been suspended, revoked or voluntarily surrendered.

39. F&M Radiology, Heikali, and Tabibian are **Insureds** under the Policy.

40. The Underlying Lawsuit is a **claim** which alleges a **medical incident** occurring on or about January 23, 2020 involving an **Insured**.

41. During the period referenced in the Underlying Lawsuit, Heikali's medical license was revoked.

42. During the period referenced in the Underlying Lawsuit, Tabibian's medical license was suspended.

43. The Underlying Lawsuit is thus a **claim** arising out of a **medical incident** involving an **Insured** which occurred while an **Insured's** license was suspended or revoked. Coverage is accordingly barred by operation of Exclusion 19.

COUNT III

Declaration that Coverage is Precluded by Operation of

Exclusion 7 of the Policy

44. General Star repeats and realleges Paragraphs 1 through 42 of this Complaint for Declaratory Judgment as if fully set forth herein.

45. Common Policy Provisions (General Exclusions), Para. 7 of the Policy provides as follows:

We will not defend or pay **damages** or **claim expenses** for any **claim** or **potential claim** arising out of, resulting from, caused by or contributed to by any of the following:

7. **Criminal Act:** Any criminal, malicious, dishonest or fraudulent act, error or omission committed by or at the direction of any **Insured**.

46. The Underlying Lawsuit asserts that F&M Radiology, Heikali, and Tabibian perpetrated a fraud on Shahriari by failing to disclose that Heikali's medical license had been revoked effective January 2, 2015 and that he did not possess a valid medical license at the time Shahriari received treatment at Sina Urgent Care.

1 47. Coverage for the Underlying Lawsuit is accordingly barred by operation
2 of Exclusion 7.

3 **COUNT IV**

4 **Declaratory Judgment that F&M Radiology, Heikali, and Tabibian Must**
5 **Reimburse Damages and Claim Expenses**

6 48. General Star repeats and realleges Paragraphs 1 to 46 of this Complaint
7 for Declaratory Judgment as if fully set forth herein.

8
9 49. Common Policy Provisions (General Conditions), Para. 16 of the Policy
10 provides as follows:

11 **16. Reimbursement:**

12 While we have no duty to do so, if we pay **damages** or **claim**
13 **expenses:**

- 14 a. Within the amount of the applicable deductible; or
15 b. In excess of the applicable Limit of Insurance; or
16 c. Under a reservation of rights to seek reimbursement, and
17 it is determined that we are entitled to reimbursement,

18 All **Insureds** for whose benefit payment was made shall be
19 jointly and severally liable to us for such amounts. Upon
20 written demand, any such **Insured** shall repay such amounts
21 to us within thirty (30) days. Failure to pay any amount
22 indicated may lead to policy termination.

23 50. Subject to the other terms and conditions of the Policy, Common Policy
24 Provisions (General Conditions), Para. 16 states that if General Star pays **damages** or
25 **claim expenses** under a reservation of rights to seek reimbursement, and it is entitled
26 to such reimbursement, the **Insureds** shall repay such amounts to the General Star.

1 51. General Star has been providing and continues to provide a defense to
2 F&M Radiology, Heikali, and Tabibian in connection with the Underlying Lawsuit,
3 subject to a strict reservation of rights.

4 52. General Star has reserved its rights to seek reimbursement of **damages**
5 and **claim expenses** from F&M Radiology, Heikali, and Tabibian.

6 53. Should the Court determine that no coverage exists for the Underlying
7 Lawsuit under the Policy, General Star is entitled to reimbursement from F&M
8 Radiology, Heikali, and Tabibian for any **damages** and **claim expenses** paid,
9 including reimbursement of all costs and fees incurred by General Star to defend F&M
10 Radiology, Heikali, and Tabibian in the Underlying Lawsuit.

11 WHEREFORE, Plaintiff, GENERAL STAR INDEMNITY COMPANY,
12 respectfully requests that judgment be entered in its favor and against the
13 Defendants, and prays that this Court:

14 a) Enter an Order finding and declaring that General Star is not obligated to
15 defend or indemnify F&M Radiology, Heikali, Tabibian, and Julian in
16 connection with the Underlying Lawsuit, or for any claim based upon,
17 arising out of, directly or indirectly resulting from or in consequence of, or
18 in any way involving the conduct and facts, circumstances and situations
19 described in the Underlying Lawsuit;

20 b) Enter an Order finding and declaring that, based on the terms and conditions
21 of one or both of Exclusion 19 and Exclusion 7 of the Policy, General Star
22 is not obligated to defend or indemnify F&M Radiology, Heikali, and
23 Tabibian in connection with the Underlying Lawsuit, or for any claim based
24 upon, arising out of, directly or indirectly resulting from or in consequence
25 of, or in any way involving the conduct and facts, circumstances and
26 situations described in the Underlying Lawsuit;

- 1 c) Enter an Order awarding General Star all costs and expenses it incurred in
2 this matter;
3 d) Enter an Order directing F&M Radiology, Heikali, and Tabibian to
4 reimburse General Star for **damages** and **claim expenses** incurred by
5 General Star, including those fees and costs incurred in defending F&M
6 Radiology, Heikali, and Tabibian in the Underlying Lawsuit; and
7 e) Grant any such other and further relief which this Court deems just and
8 proper.
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10 **DEMAND FOR JURY TRIAL**

11 Plaintiff, GENERAL STAR INDEMNITY COMPANY, hereby demands a
12 trial by jury.

13 Respectfully submitted,

14 DATED: April 1, 2022

LEWIS BRISBOIS BISGAARD & SMITH LLP
Rebecca R. Weinreich
Aaron T. Knapp

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19 By: /s/ Rebecca Weinreich
20 Rebecca R. Weinreich
21 Attorneys for Plaintiff GENERAL STAR
22 INDEMNITY COMPANY
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